

## Environmental Protection Agency

## § 80.1455

and/or obtain these affidavits at least once per calendar quarter.

(vi) The biogas or renewable electricity producer's Compliance Certification required under Title V of the Clean Air Act.

(vii) The biogas or renewable electricity producer's Compliance Certification required under Title V of the Clean Air Act.

(viii) Such other records as may be requested by the Administrator.

(2) Biogas and electricity in pathways involving grain sorghum as feedstock. A renewable fuel producer that produces fuel pursuant to a pathway that uses grain sorghum as a feedstock shall keep all of the following additional records, as appropriate:

(i) Contracts and documents memorializing the purchase and sale of biogas and the transfer of biogas from the point of generation to the ethanol production facility.

(ii) If the advanced biofuel pathway is used, documents demonstrating the total kilowatt-hours (kWh) of electricity used from the grid, and the total kWh of grid electricity used on a per gallon of ethanol basis, pursuant to § 80.1426(f)(13).

(iii) Affidavits from the producer of biogas used at the facility, and all parties that held title to the biogas, confirming that title and environmental attributes of the biogas relied upon under § 80.1426(f)(13) were used for producing ethanol at the renewable fuel production facility and for no other purpose. The renewable fuel producer shall obtain these affidavits at least once per calendar quarter.

(iv) The biogas producer's Compliance Certification required under Title V of the Clean Air Act.

(v) Such other records as may be requested by the Administrator.

(1) The records required under paragraphs (a) through (d) and (f) through (k) of this section and under § 80.1453 shall be kept for five years from the date they were created, except that records related to transactions involving RINs shall be kept for five years from the date of the RIN transaction.

(m) The records required under paragraph (e) of this section shall be kept through calendar year 2022.

(n) On request by EPA, the records required under this section and under § 80.1453 must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available; or, if requested by EPA, electronic records shall be converted to paper documents.

(o) The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any foreign producer not generating RINs for his renewable fuel.

(p) Copies of all reports required under § 80.1464.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26046, May 10, 2010; 75 FR 76829, Dec. 9, 2010; 75 FR 79978, Dec. 21, 2010; 77 FR 74606, Dec. 17, 2012; 78 FR 22789, Apr. 17, 2013]

### **§ 80.1455 What are the small volume provisions for renewable fuel production facilities and importers?**

(a) *Standard volume threshold.* Renewable fuel production facilities located within the United States that produce less than 10,000 gallons of renewable fuel each year, and importers who import less than 10,000 gallons of renewable fuel each year, are not subject to the requirements of § 80.1426(a) and (e) related to the generation and assignment of RINs to batches of renewable fuel. Except as stated in paragraph (b) of this section, such production facilities and importers that do not generate and assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart:

(1) The registration requirements of § 80.1450.

(2) The reporting requirements of § 80.1451.

(3) The EMTS requirements of § 80.1452.

(4) The recordkeeping requirements of § 80.1454.

(5) The attest engagement requirements of § 80.1464.

(6) The production outlook report requirements of § 80.1449.

(b)(1) Renewable fuel production facilities and importers who produce or

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import less than 10,000 gallons of renewable fuel each year and that generate and assign RINs to batches of renewable fuel are subject to the provisions of §§80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.

(2) Renewable fuel production facilities and importers who produce or import less than 10,000 gallons of renewable fuel each year but wish to own RINs will be subject to all requirements stated in paragraphs (a)(1) through (a)(6) and (b)(1) of this section, and all other applicable requirements of this subpart M.

(c) *Temporary volume threshold.* Renewable fuel production facilities located within the United States that produce less than 125,000 gallons of renewable fuel each year are not subject to the requirements of §80.1426(a) and (e) related to the generation and assignment of RINs to batches of renewable fuel for up to three years, beginning with the calendar year in which the production facility produces its first gallon of renewable fuel. Except as stated in paragraph (d) of this section, such production facilities that do not generate and assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart for a maximum of three years:

(1) The registration requirements of §80.1450.

(2) The reporting requirements of §80.1451.

(3) The EMTS requirements of §80.1452.

(4) The recordkeeping requirements of §80.1454.

(5) The attest engagement requirements of §80.1464.

(6) The production outlook report requirements of §80.1449.

(d)(1) Renewable fuel production facilities who produce less than 125,000 gallons of renewable fuel each year and that generate and assign RINs to batches of renewable fuel are subject to the provisions of §§80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.

(2) Renewable fuel production facilities who produce less than 125,000 gallons of renewable fuel each year but wish to own RINs will be subject to all requirements stated in paragraphs (c)(1) through (c)(6) and (d)(1) of this

section, and all other applicable requirements of this subpart M.

[75 FR 14863, Mar. 26, 2010, as amended at 75 FR 26047, May 10, 2010]

### § 80.1456 What are the provisions for cellulosic biofuel waiver credits?

(a) If EPA reduces the applicable volume of cellulosic biofuel pursuant to section 211(o)(7)(D)(i) of the Clean Air Act (42 U.S.C. 7545(o)(7)(D)(i)) for any given compliance year, then EPA will provide cellulosic biofuel waiver credits for purchase for that compliance year.

(1) The price of these cellulosic biofuel waiver credits will be set by EPA on an annual basis in accordance with paragraph (d) of this section.

(2) The total cellulosic biofuel waiver credits available will be equal to the reduced cellulosic biofuel volume established by EPA for the compliance year.

(b) *Use of cellulosic biofuel waiver credits.*—(1) Cellulosic biofuel waiver credits are only valid for use in the compliance year that they are made available.

(2) Cellulosic biofuel waiver credits are nonrefundable.

(3) Cellulosic biofuel waiver credits are nontransferable.

(4) Cellulosic biofuel waiver credits may only be used for an obligated party's current year cellulosic biofuel RVO and not towards any prior year deficit cellulosic biofuel volume obligations.

(c) *Purchase of cellulosic biofuel waiver credits.*—(1) Only parties with an RVO for cellulosic biofuel may purchase cellulosic biofuel waiver credits.

(2) Cellulosic biofuel waiver credits shall be purchased from EPA at the time that a party submits its annual compliance report to EPA pursuant to §80.1451(a)(1).

(3) Parties may not purchase more cellulosic biofuel waiver credits than their current year cellulosic biofuel RVO minus cellulosic biofuel RINs with a D code of 3 that they own.

(4) Cellulosic biofuel waiver credits may only be used to meet an obligated party's cellulosic biofuel RVO.